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09/522,421	03/09/2000	Jacek Stachurski	TI-29010	4064

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EXAMINER

CHAWAN, VIJAY B

ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/522,421
Filing Date: March 09, 2000
Appellant(s): STACHURSKI ET AL.

Carlton H. Hoel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 1, 2004.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-4 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,966,689	McCree	10-1999
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(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The method of replacing a strong predictor following a weak predictor with a weak predictor in an encoding method using a strong and weak predictors is critical or essential to the practice of the invention,

and how this is accomplished is not included in the claims, and is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976).

It is not clear from the claim language, why or how this is accomplished. Also when the applicant claims replacing, "replace" to do what is not clear. Also, the method of replacing a strong predictor with a weak predictor is not being recited. In other words the recited claim language is missing an essential step.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not clear from the claim language, when the step "(a) said step (a) of claim 1 replaces a second successive strong predictor with a corresponding second weak predictor" happens, or how it happens, since claim 1 does not set forth any step in the method of replacing a strong predictor following a weak predictor with a weak predictor.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1-4 are is rejected under 35 U.S.C. 102(b) as being anticipated by McCree (5,966,689).

As per claims 1 - 4, McCree teaches an encoding system using strong and weak predictors, comprising the step of: replace a strong predictor following a weak predictor with a weak predictor using pitch harmonics in a given range, (Col.5, line 21 – Col.6, line 48).

As per claim 2, McCree teaches strong predictor and weak predictor predict the Fourier coefficients for the pitch harmonics (figures 4a –4d).

As per claim 3, McCree teaches ranges for a strong predictor and a weak predictor (Col.4, lines 4-60, Col.5, lines 38-65).

(11) Response to Argument

(1) Whether claims 1-4 are supported by the specification.

Appellants assert that the paragraph bridging application pages 7-8 describes weak and strong predictors and the use of these predictors (including replacement) is described, with examples, on application page 9, second to last paragraph through page 10, last paragraph.

The method of replacing a strong predictor following a weak predictor with a weak predictor in an encoding method using a strong and weak predictors is critical or essential to the practice of the invention, and how this is accomplished is not included in the claims, and is not enabled by the disclosure. The specification does not set forth clearly how the method of replacing a strong predictor followed by a weak predictor with a weak predictor. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). It is not clear from the claim language, why or how this is accomplished.

Also when the applicant claims replacing, "replace" to do what? is not clear. Also, the method of replacing a strong predictor with a weak predictor is not being recited. In other words the recited claim language is missing an essential step.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the method of replacing a strong predictor following a weak predictor

with a weak predictor) are not recited in the rejected claim(s). In other words, the claim is missing an essential step or steps. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(2) Whether claim 4 is indefinite.

Appellants reply/argue that one of ordinary skill in the encoding art would understand the terminology and method of claims.

The method of replacing a strong predictor following a weak predictor with a weak predictor in an encoding method using a strong and weak predictors is critical or essential to the practice of the invention, and how this is accomplished is not included in the claims, and is not enabled by the disclosure. . The specification does not set forth clearly how the method of replacing a strong predictor followed by a weak predictor with a weak predictor. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). It is not clear from the claim language, why or how this is accomplished.

Also when the applicant claims replacing, "replace" to do what? is not clear. Also, the method of replacing a strong predictor with a weak predictor is not being recited. In other words the recited claim language is missing an essential step.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant

relies (i.e., the method of replacing a strong predictor following a weak predictor with a weak predictor) are not recited in the rejected claim(s). In other words, the claim is missing an essential step or steps. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(3) Whether claims 1-4 are anticipated by the McCree reference.

Applicant argues that the McCree reference has no suggestion of a strong predictor and weak predictor. Examiner disagrees. McCree shows MELP coder and a CELP coder to equalize the spectral tilt without reducing formant enhancement by introducing an all pole filter (which is a weak predictor). (Col.4, lines 36-44, especially line 41, which by implication others are stronger). Based on the claimed subject matter it is not clear how or which method is being claimed by the applicant to "replace a strong predictor following a weak predictor with a weak predictor". Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

As per claims 2 and 3, Appellant argues that the limitations of claims 2 and 3 are not present in the McCree reference. Examiner disagrees. The values of α and β are constants used by the McCree reference to manipulate the coefficients of the

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prediction filters, both MELP and the CELP to decrease the spectral tilt without reducing the formant enhancement, THUS INHERENTLY MODIFYING THE Fourier Coefficients for the pitch harmonics, by modifying them with the frequency response.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Vijay B. Chawan

Primary Examiner

Art Unit 2654

VBC

July 23, 2004

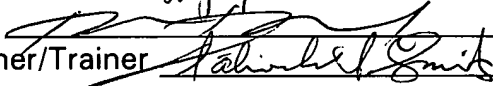
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